

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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November 30, 2011

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RE: Donald Washington v. State Farm Mutual Automobile Insurance
Civil Action No. 09C-06-066 WCC

Submitted: August 23, 2011
Decided: November 30, 2011

Dear Counsel:

The Court has reviewed the transcript and exhibits of the bench trial held on August 22 and 23, 2011. This review included reading the deposition of Dr. Crain on which the plaintiff relies to support his position.

The plaintiff has been involved in numerous automobile accidents as well as a work related injury since 2000. However, the disputed injuries relate to an automobile accident on May 12, 2007. The plaintiff was struck by another vehicle on the driver side of his car. The plaintiff's window was down, and his left arm was resting on the open window when the cars collided. The plaintiff complained of injury to his left shoulder and was taken to the hospital. Neither the

records of Christiana Care ER nor the treating doctor he saw immediately after the accident reflect any injury to his right knee.

It appears that the plaintiff first referenced an injury to his knee in September of 2007, approximately four months after the accident, during a routine visit with Dr. Buckley. Unfortunately there is nothing in the doctor's records during the September visit that connects the knee pain to the May 12th accident. It appears that even when the plaintiff was specifically asked by the doctor whether the knee pain was associated with any particular traumatic event, the plaintiff did not mention the accident to her. This inconsistency was compounded at trial when both the plaintiff and his wife testified that the knee issue first manifested itself when the plaintiff fell at the Christiana Mall. Both testified that this event occurred in April or May of 2007, approximately a month before the car accident.

Even if the Court accepts that the plaintiff and his wife are both confused about the date when the Christiana fall occurred, their testimony calls into question whether there is a relationship between the knee pain that the plaintiff experienced and the May 12th accident. As Dr. Buckley testified, the condition of his knee is equally consistent with a prolonged deterioration as a result of the plaintiff's age.

By 2007, the plaintiff would best be characterized as an "experienced patient." He had numerous injuries both from automobile accidents and a work injury. This makes it difficult for the Court to believe that, if the knee injury was in any way connected to the accident, he would not have commented to the doctor about the connection. The Court is not suggesting that the plaintiff was lying during his testimony, but at best he is speculating that the pain he is now experiencing in his knee must have been related to the accident, even though there is nothing to support that conclusion from the medical records which have been provided to the Court. From the plaintiff's perspective this may be a logical connection, but legally there is nothing to suggest a causal relationship.

The plaintiff attempts to overcome this hurdle by relying upon Dr. Crain, who testified that it is his opinion that the injury and the subsequent knee replacement surgery was a result of the accident. But a careful analysis of the doctor's testimony reflects that this opinion is largely based upon the subjective information provided by the plaintiff, which is at best suspect. In this case, the plaintiff has the burden of convincing the trier of fact that the injury was related to

the accident. Based upon the record and testimony presented, the Court simply cannot find the plaintiff has met this burden.

As a result, the Court finds in favor of the defendant as this case relates to the alleged knee injury and subsequent surgery. It appears to the Court that the parties agree that the plaintiff's shoulder was injured in the accident, and the Court assumes that the damages associated with that injury are not being disputed by the defendant. Therefore, unless requested otherwise, that issue will not be addressed by the Court.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Christy Magid, Civil Case Manager